

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

Retail Access Optimization Initiative, 2011

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Docket No. N2011-1

**REPLY BRIEF OF  
VALPAK DIRECT MARKETING SYSTEMS, INC., AND  
VALPAK DEALERS' ASSOCIATION, INC.**  
(November 10, 2011)

**I. Certain Intervenor Would Have the Commission Misread 39 U.S.C. section 101(b) to Omit the Word "Solely."**

Initial Briefs filed by the American Postal Workers Union, AFL-CIO ("APWU"), the Association of United States Postal Lessors ("AUSPL"), the National League of Postmasters ("NLP"), and the Public Representative ("PR") claim that the selection criteria of the Retail Access Optimization Initiative ("RAOI") violate the prohibition in 39 U.S.C. section 101(b) that "No small post office shall be closed solely for operating at a deficit."<sup>1</sup>

APWU states that "the selection criteria used to determine the 'low workload Post Offices' is nothing more than a proxy for selecting post offices that are operating at a deficit.... Thus, by design, the Initiative selects facilities that are operating at a deficit.... Consequently, the RAOI criterion for the 'low workload Post Offices' inherently violates Section 101(b) of the Act." APWU Initial Brief, p. 9.

AUSPL states "The very criteria used by the Postal Service, namely that they looked at retail facilities where revenue was no greater than \$27,500, virtually assured that rural post offices will be selected for closure which is directly in conflict with the

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<sup>1</sup> The National Association of Postmasters of the United States Initial Brief, p. 3, asserted such a violation, but did not elucidate.

Act which provides that a small post office shall not be closed solely for operating at a deficit.” AUSPL Initial Brief, p. 4.

NLP claims that “little has been said by the Postal Service about the legal prohibition against closing rural post offices that it finds to be not self-sustaining. Yet, as we all know, that is exactly what is going on in this case. Indeed, the threshold for the criteria of admission to the RAOI is earned hours. That would seem to be a fairly good criteria for segmenting facilities that are not ‘self-sustaining.’” NLP Initial Brief, p. 10. NLP then quotes APWU witness Anita Morrison who “testified that ‘the law does require that we provide service to rural areas regardless of whether they are losing money, whether they make a profit.’” *Id.*, p. 41. NLP requested the Commission to disapprove of RAOI “in the context of a specific prohibition against closing post offices for operating at a deficit....” *Id.*, p. 43.

The PR states “The Postal Service’s ‘low workload’ criteria for this initial phase of the RAOI targets rural and small town facilities running at a deficit.” PR Initial Brief, p. 3. *See also id.*, pp. 6-9.

The Postal Service Initial Brief anticipated these arguments and explains that its selection criteria was “structured so as not to violate the 39 U.S.C. § 101(b) prohibition against closing small Post Offices solely for operating at a deficit” (p. 16) and that operating at a deficit:

does not preclude the Postal Service from considering whether to discontinue their operations. The Postal Service is only precluded from closing a *small* Post Offices *solely* on this basis.... [Postal Service Initial Brief, p. 16 n.13 (italics original).]

APWU, AUSPL, NLP, and PR would read the word “solely” out of section 101(b). The Postal Service has a duty under 39 U.S.C. section 404(a)(3) to “determine the need for post offices” and that need goes to both the opening and the closing of **all** post offices, including post offices that are operating at a loss. The Postal Service selection criteria of the RAOI appears to select post offices whose patrons have demonstrated a reduced need for that post office. The Postal Service must weigh numerous factors of closing versus maintaining a particular facility, and section 101(b) authorizes the Postal Service to close non-self-sustaining post offices as long as that is not the **only** reason for doing so. 39 U.S.C. section 101(b) does not provide, for example, that if a post office starts losing money, it is therefore placed onto a protected list of “Post Offices That Can Never Be Closed.” Efforts to misread section 101(b) should be rejected.

## **II. The “Maximum Degree” Language in Section 101(b) Cannot Be Taken Out of Context.**

Section 101(b) requires the Postal Service to “provide a maximum degree of effective and regular postal services to rural areas....” NLP characterizes this language as requiring “maximum service,” “maximum degree of service,” “maximum service policy,” and other variations — fully 19 times. *See generally* NLP Initial Brief.

A “maximum degree of effective and regular postal services” is by no means the same as “maximum service.” Out of context, the words “maximum service” have a very different meaning than the meaning in the context Congress used those words. These words cannot be wrenched from their context without doing violence to their meaning which was discussed by

Valpak and the Postal Service in their Initial Briefs. *See* Valpak Initial Brief, pp. 10-13. *See also* Postal Service Initial Brief, pp. 18-20.

Respectfully submitted,

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